RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE

DRAFT AGENDA
October 21, 2011
9:00 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. Definition of bulk data
   - Is definition necessary or useful? Differentiate from "regular" FOA requests?
   - If so, what should it be?

3. Arriving at a cost
   - Process now included in Title 33?
   - Commercial vs. noncommercial?
   - Other factors?

4. Agency-specific concerns (deeds, IF&W, law enforcement, etc.)

5. Providing responses in a certain form or format (overlap with Legislative Subcommittee discussion?)

6. Other?

7. Scheduling future subcommittee meetings

Scheduled meetings:
~~Thursday, October 27, 2011, 1:00 p.m., Public Records Exceptions Subcommittee~~ *(cancelled)*
Thursday, November 10, 2011, 1:00 p.m., Legislative Subcommittee
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

Fri 10/14/2011 12:49 PM

The following comments have been provided by John Simpson, owner and General Manager of MacImage of Maine LLC, an information technology business located in Cumberland, Maine.

MacImage of Maine has challenged the fees several Maine registries of deeds charge for copies of public records in court. The Maine Supreme Judicial Court will hear oral arguments in the case on Dec. 12-13, 2011. Court records related to the case can be found online at:

http://www.macimage.com/foaa/case.html

John Simpson can be reached by phone at (207) 838-5823 or email at jsimpson@me.com

1. What is bulk data and how should it be defined?

Bulk data can not and should not be distinguished from other types of public. Why?

First, the term "bulk" will have different meanings depending on the type of public records at issue or the content of those records. For example, consider the following public records:

(a) a single 200-page report printed on paper
(b) 200 one-page paper documents
(c) one electronic file containing a list of 200 addresses
(d) one electronic file containing 200 scanned pages
(e) 200 electronic files which each contains a single scanned page

There could be considerable debate about whether a request for any of the above records would be "bulk" requests.

Second, even if there were a way to define "bulk" records, quantity is often not a good measure of either the cost of producing records or the value of those records.

2. What is the appropriate method of determining the cost that a requestor must pay for bulk data?

People concerned about the cost issue generally have one of the following goals:

(1) to allow government to recover costs associated with responding to requests for public records
(2) to allow a government agency to recover unrelated operating costs (costs that would be incurred even if no copies of bulk records were requested)

(3) to allow government to profit by selling public records ... and use those profits instead of taxes and other sources of revenue to fund unrelated operations
(4) to prevent or limit access to certain public records
(5) to prevent anyone from reselling products or services derived from public records for a profit.

Goal 1 (recovering copy costs) is permitted under current law and enables the public to obtain copies of public records at no cost to taxpayers. A person must only pay for costs incurred because of her request. Copy costs are fairly easy to calculate. Thus, it is fairly easy to ensure that persons requesting copies pay all costs associated with their request.

In this case, the agency should charge a requestor for incremental expenses incurred solely to make the requested copies. In addition to incremental expenses, an agency could allocate overhead costs incurred solely to provide copies proportionally to all persons requesting copies. For example; a portion of the cost of a photocopier or fax machine used only to make copies for the public could be recovered through copy fees. However, an agency should not recover overhead costs more than once by over-allocating overhead costs to multiple requestors.

The basic rule must be that operating costs that would be incurred even if no copies were made may not be recovered through copy fees. An agency may only recover costs only when the agency makes or assists in making copies by providing equipment, materials or labor. For example; an agency could not charge a copying fee to persons who use their own cameras to copy public records. The FOAA gives every person the right to inspect public records at no cost. Thus, all costs related to photographing records would be required to allow inspection, and would be incurred even if no copies/photographs were made.

Goal 2 and Goal 3 (recovering agency operating costs) shifts the burden of funding some or all costs of operating a government agency from all taxpayers to persons requesting copies of public records.

The question of who should pay agency operating costs is a policy question. There is no inherent benefit to funding an agency through fees instead of taxes. A tax is a fee to the person paying the fee, and in most cases copy fees are paid by taxpayers either directly or indirectly (when they purchase products or services from a business that bought the copy).

However, there can be a hidden cost to funding agencies with profits obtained by selling copies of public records. Whenever fees exceed the cost of producing copies, there is a risk that the fees will block access to public records. Persons who could afford to pay fees based on the incremental cost of producing a copy may not be able to afford higher copy fees. Thus, the public may be denied access to the value of public records with no offsetting public benefit.

Goal 4 (blocking access to certain records) is more effectively addressed by creating an exemption in the FOAA for specific types of records.

Goal 5 (blocking some or all commercial uses of public records) is contrary to the policy behind the FOAA. Allowing public resources to be used for commercial purposes allows companies to provide products and services that government can not or does not provide. Public records are no different than other public resources such as water and roads. Public benefits are maximized when more people have access to a public resource. In short, profit is a good thing.

3(a). Should a requestor of bulk data be entitled to the records in the format and type of access requested?

The public will benefit if access is provided in different formats upon request, especially when the records already exist in multiple formats. People request a specific formats because they will benefit from that format. There is simply no reason to deny a request for a specific format if the requestor is willing to all costs of producing copies in that format.

3(b). Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?

Clearly the government has an interest in preserving the integrity of its records. Thus, the government must maintain possession of original records and an official electronic copy if one exists. However, the distinction between access and ownership serves no purpose (other than to restrict access) with regards to copies of public records. People need to have copies of public records in their possession for many reasons. In theory, the government could retain "ownership" of all copies of public records and attempt to force people to pay a copy fee whenever they made a copy of a copy of a public record in their possession. Practically, however, a law forcing people to pay such copy fees could not be enforced. And, in any case, such a law would restrict access to public records with little or no offsetting benefit. Taxpayers do not benefit by paying copy fees instead of taxes because virtually all copy fees are paid by or passed on to taxpayers.

4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

The public benefits when commercial entities use public records to provide services that government does not provide or services that are better or less expensive than services provided by government. The public incurs no costs when businesses pay copy fees equal to the cost of producing copies of public records. However, charging higher copy fees to businesses could be counter-productive The businesses will either stop offering a valuable service or pass on the higher fees to their customers (the public).

The notion that the public would benefit if government use profits from selling copies of public records instead of taxes to pay its bills is false. Businesses must pass on their

costs to their customers (the public) or go out of business. Its a zero-sum game. Every dollar of government operating expenses that is funded by higher fees will be passed on to the public.

If out-of-state businesses purchased large numbers of copies of Maine public records, and these copy costs were not passed on to Mainers, then charging higher copy fees to businesses could reduce our tax burden. But, there is no evidence this happens. Out-of-state businesses buy Maine public records because they can resell products or services based on these records to Mainers. There is no out-of-state market for copies of Maine public records.

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

TESTIMONY OF SHENNA BELLOWS

Regarding: Appling Maine's Freedom of Access Laws to Requests for Bulk Data

Submitted to the

BULK RECORDS SUBCOMMITTEE OF THE RIGHT TO KNOW ADVISORY COMMITTEE

October 14, 2011

The American Civil Liberties Union of Maine (the "ACLU of Maine") is a nonprofit, nonpartisan organization dedicated to protecting the basic civil liberties and civil rights of the people of Maine.[1] The ACLU of Maine has a long history of involvement through policy making, political efforts, and litigation in support of the public's right to open government proceedings and records.

Fortunately, Maine policy makers have taken clear steps to ensure public access to public records. In passing the Freedom of Access Act (the "FOAA"), the Legislature explicitly intended to open public records to the public and for the definition and scope of protected information to be interpreted expansively. 1 M.R.S.A. § 401; *Medical Mut. Ins. Co. of Maine v. Bureau of Ins.*, 866 A.2d 117, 120 (Me. 2005).[2] Under the FOAA, "[p]ublic records are subject to the right of the public to inspect and copy." *Medical Mut. Ins. Co. of Maine v. Bureau of Ins.*, 866 A.2d 117, 120 (Me. 2005).

The law "declares as a matter of public policy that records of public action shall be open to public ins pection. It leaves little room for qualification or restriction." *Bangor Pub. Co. v. City of Bangor*, 544 A.2d 733 (Me. 1988).

[1] The ACLU of Maine was organized in 1968 as the Maine Civil Liberties Union. It changed its name in 2011 in order to better reflect its status as the Maine affiliate of the American Civil Liberties Union.

[2] The FOAA is to be "liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent." *Id.* In fact, Maine 's Supreme Court has declared, in interpreting the FOAA, that "to a maximum extent the public's business must be done in public." *Moffett v. City of Portland*, 400 A.2d 340, 347-348 (Me. 1979). In its application and interpretation, "[t]he most effective right-to-know law should assist the public in gaining access to information that is open to the public." Anne C. Lucey, Comment, *A Section-By-Section Analysis of Maine's Freedom of Access Act*, 43 Me. L. Rev. 169, 224 (1991) (arguing that "[t]he benefits to both the agency and public outweigh the expense an open government brings").

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

Therefore, any analysis of policies surrounding requests to copy public records should begin with the premise that access to public records must be maximized. It is from this vantage point and perspective that we offer the following.

Question 1.

What is the definition of bulk record?

Bulk records could reasonably be defined in multiple ways. Bulk data includes information and records that have been compiled into a single, most likely electronic, file or database. This is fast becoming the most common way for government to store new and old data. The definition should not lead to a disparate treatment of the information under Maine's FOAA laws.

Question 2.

What is the appropriate method of determining the cost that a requestor must pay for bulk data?

The fee for copying public records should be reasonably related to the actual cost of copying. Prior to 2003, Maine's FOAA provided that "the cost of copying any public record . . . shall be paid by the person requesting the copy." 1 M.R.S.A. § 408 (2002). However, in response to the recommendations of the Committee to Study Compliance with Maine's Freedom of Access Laws, the Maine legislature completely rewrote the section on fees and explicitly required that any fees charged for the cost of copying must be "reasonable." P.L. 2003, ch. 709, § 2.

Therefore, for example if a government agency has an electronic database containing hundreds or thousands of compiled records, a person requesting a copy of that database should be charged only for the related cost of copying the database in its current electronic form – not for what it would cost to duplicate the records individually with paper photocopies or another format.

This only makes sense: copying an electronic file from one device to another is a task most people in today's world are familiar with. It involves initiating the copy process and walking away from the device (such as an external hard drive costing less than $1,000) while it runs. Again, the bottom line is that regardless of whether the data is bulk or not, there should be a rational connection to the actual cost of copying the data to the fees charged.

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

Question 3.

Should a requestor of bulk data be entitled to records in the format and type of access requested? Should a distinction be made between a requestor seeking access to records and a requestor seeking ownership of records?

A requestor of bulk data should be entitled to access records in manner they wish and in the formats requested if it already exists or is reasonably available. They may be charged only reasonably related fees. Anything else would be considered a constructive denial of the request and a violation of the Act. This is a crucial point. Public agencies cannot be permitted to provide public data in an intentionally inconvenient format in order to burden or limit public access.

Further, if already converted, the public has a right to share in the benefits of this conversion. When substantial amounts of taxpayer funds are used to convert paper files into electronic streams of data, among the resulting conveniences are dramatically lowered copying costs. This is precisely the type of benefit that the public has already paid for and which the public should receive in return. *See Margolius v. City of Cleveland*, 584 N.E.2d 665, 669 (1992) ("[A] set of public records stored in an organized fashion on a magnetic medium also contains an added value that inherently is a part of the public record. Here, the added value is not only the organization of the data, but also the compression of the data into a form that allows greater ease of public access").

Finally, there should be no distinction made between a requestor seeking access to records and a requestor seeking ownership of records. An individual or entity seeking public records for whatever reason should be treated without prejudice or differentiation. It should not be the legislature's job to create a hierarchy of more or less access depending on what the requestor intends to do with the records.

Question 4.

Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

As with the second part of question 3 – the answer is no – the law should not distinguish between those seeking data for commercial and those seeking it for noncommercial purposes. The legislature should not be

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

in the business of determining more or less worthy motives for accessing public information and burdening some more than others.

Again – because the requestor is a member of the public, fundamentally we are talking about information that *belongs to her already.* If the FOAA is to be effective, all segments of the population must have access to public records.

Conclusion.

There are few public policies more vital than an open government. Maine's Freedom of Access Act is designed to support transparency by providing access to governmental activities and records for all – not just for those with money or those who promise to use the information for non-commercial purposes. Any decisions governing the public's access to bulk information should be made with the intended result of ensuring access to the widest swath of information by the broadest spectrum of the public.

Re: Answers to Questions Posed by the Right to Know Advisory Committee/Bulk Records Subcommittee

Introduction

InforME, as the State's official electronic portal, offers bulk data access as one of its information access services. These services are created from data assembled through value-added processes, from agency repositories for access to authorized InforME customers on behalf of state agencies. The InforME Board is mindful that there are many complex issues related to this discussion and that the services it provides and the terminology it uses varies significantly from others supplying information to the subcommittee. It hopes that this submission will provide information helpful in the committee's deliberations and is committed to supporting the committee's efforts on improving public information access and related issues going forward.

1. What is bulk data and how should it be defined?

Bulk data defined:

Bulk data is an electronic collection of data composed of information from multiple records, whose primary relationship to each other is their shared origin from a single or multiple databases. The data is generally extracted from a database and provided in a common electronic file type. Bulk data does not include paper copies of records. A request for bulk data is also different from a request for multiple records, if we consider a record to be a "document" such as an individual deed, copy of a license, birth certificate, or even the data collected and stored related to a single event, person or other data element (for example). Requesting multiple records (paper or electronic images) is different from requesting a data file with information from multiple records - the latter is bulk data. Each individual agency determines which bulk data sets are eligible for public request and is responsible for ensuring the state laws, regulations, and privacy requirements are adhered to whenever bulk data is made available for access.

Databases themselves may be proprietary, or complex and unusable to a requester without special software or instructions. A request for data is not the same as a request for a database.

InforME bulk data services defined:

InforME, as the State's official electronic portal, offers bulk data assembled through value-added processes, from agency repositories (electronic databases) to provide access to authorized InforME customers on behalf of state agencies. InforME may modify the data from its original form in various ways, including removal of sensitive information, selection, sorting or combining records for a particular use or to customer specifications, and reformatting or restructuring of data, as well as a variety of delivery mechanisms including self-service online services and FTP delivery. InforME offers data for one-time access or on recurring schedules such as monthly or quarterly, and manages customer requests, customer service, payments and invoicing.

Information Resource of Maine
45 Commerce Drive, Suite #10 | Augusta, ME 04330
207-621-2600 | Fax 207-621-9950 | Toll free 877-4ME-EGOV

2. What is the appropriate method of determining the cost that a requestor must pay for bulk data?

Fees for InforME bulk data access are determined by statute, agency rulemaking, or through board oversight as defined in Title 1 §534 5. G. which specifies that fees for InforME services must be:

- Sufficient to maintain, develop, operate and expand InforME on a continuing basis.
- Reasonable but sufficient to support the maximum amount of information and services provided at no charge.
- Sufficient to ensure that, to the extent possible, data custodians do not suffer loss of revenues from sources that are approved or authorized by law due to the operations of InforME.
- Sufficient to ensure that data custodians are reimbursed for the actual costs of providing data to InforME.
- Sufficient to meet the expenses of the statutory InforME board.

InforME's service and data delivery model is designed to enhance electronic access to public information and transactions for citizens and businesses, by pooling fees from all services that have commercial value, to provide those services plus other services which have no commercial value but are needed or desired by Maine citizens and businesses. Recapturing some of the commercial value of the taxpayer-assembled data in order to provide services to Maine citizens and businesses allows InforME to increase the availability of all state electronic information and online services. Revenue from bulk data services supports not only bulk data distributions but also the provisioning of many other electronic services to the public, and also to state agencies. Those other services are then provided to the public and agencies at no cost to them. The elimination of its bulk data services or reductions to pricing would likely reduce InforME's ability to provide access to public information via existing and future portal services, with resulting effect on the ability of state agencies to provide efficient, cost-effective online services for the public.

Examples of InforME public access services supported in part by bulk data services:

- Maine.gov - the State of Maine's official web site
- Hosting of nearly all Maine state agency websites
- Agency webmaster support, tools, and training
- Online Absentee Ballot Request system
- Maine.gov DataShare public data catalog
- HireME online state job application system
- Online Sex Offender Registry Search
- Online State Parks Search
- Unclaimed Property Search/Claim service
- Voter Information service
- Qualifying Contributions for Clean Elections Candidates system
- Maine Organ Donor Registry

3. Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requester seeking access to records and a requestor seeking ownership of records?

Data distributed via InforME's bulk data services is delivered in an electronic file format that is developed based upon a balance of considerations between minimizing assembly costs and providing the greatest utility to the largest number of customers possible. It is not practical for a requester to have the right to receive data in any format they desire, as that may be impossible in some cases, and very expensive in others. If multiple formats are already available, then it is reasonable for the requester to choose which format they prefer.

Access vs. Ownership

In the digital age, it is very difficult to distinguish sometimes between access and ownership. The information being accessed as bulk data is assembled at taxpayer expense for the purpose of allowing the agency to do its statutorily required work. While agreements can limit rights to use records, it is often difficult to determine, without an after-the-fact audit, whether the records were actually used in accordance with the contract restrictions, once out of sight of InforME or the agency. Similarly, while an agreement can withhold ownership and only grant a license to use, because bulk data is by definition an extract of information from a record, it may also be impossible to tell whether someone's address came from a state record or from other sources. Certainly any information that can *only* come from a state record would be easier to track for compliance purposes. For requestors of information, the issue will be whether they are entitled under "access" to use the data however they wish.

An example may be helpful. Certain requestors use vehicle registration information to send safety recalls on behalf of vehicle manufacturers. Such information is subject to the Driver Privacy Protection Act ("DPPA"), which restricts its use to certain purposes, including safety recalls. If the bulk requester was to assert ownership to the information which it *obtained* from the bulk data -- for example, vehicle owner address information -- and used it for a purpose outside the limits of the DPPA, then this could be a violation of the law. But it might be difficult to establish that the address information came from a state database. However, a vehicle identification number, which is not generally available from other sources, might be more easily proven to have come from a state database.

In the case of vehicle registrations, *access* might be the appropriate level of permission—access to use for a specific purpose, or any purpose permitted by the DPPA. Ownership is not similarly restricted, so ownership might be inappropriate for such data.

However, in the digital age, again, once a "copy" of the extracted data is delivered to a requestor, it may become very difficult to prevent the requestor from asserting that it purchased non-exclusive "ownership" rather than only a license to access for a specific purpose, and even more difficult to restrict what the owner does with the data in its possession.

4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

Yes. The great majority of InforME bulk data requests are for commercial use, since most individuals have little use for bulk data. Pricing for InforME's services, including bulk data access, to commercial entities is designed to conform with InforME's statutory constraints

(above) and is additionally limited by the data's market value. The provision of bulk data services requires resources for customer service, invoicing, compiling and delivering data, and creating and maintaining electronic systems specifically for the purpose of meeting bulk data requests. By leveraging InforME to provide these services on behalf of all state agencies, state agencies offer an economical value-added service to customers, save significant staff time and expense, and contribute to the support of other InforME services for the public's benefit.

Freedom of access requires provision of access to government records, which obligation is met by making individual records available for viewing. This prevents government processes and decisions from being made secretly or without accountability. Commercial entities have many legitimate reasons for purchasing bulk government data and there is no reason they should not be allowed to do so with the intention of making a profit, so long as those efforts are balanced against the public's privacy interest and do not undermine the government's service delivery missions including public access efforts. Commercial requests for bulk data services are not about "access to government records" as the records are already available in individual formats; rather, they are about the commercial desire for a value-added compilation and delivery of data with commercial value. The market value of bulk data is a cost of business that commercial entities can absorb. Commercial entities should not obtain valuable bulk data for their commercial use at a nominal cost.

On the other side, there are a small number of requests for bulk data for non-commercial purposes such as academic research or news reporting. It makes sense to offer a simpler (less resource intensive) data service for these requestors at lower cost, with use restricted to those limited purposes.

How does privacy fit into the discussion?

InforME is mindful of the threat to privacy for individuals posed by bulk data ac that goes beyond personally identifiable information contained in individual records. Wide distribution of large volumes of public information can be subjected to modern computer processing treatments involving multiple databases which can yield a depth of information about individuals that goes beyond the anticipated disclosure. This is generally known as data mining. InforME does not perform data mining and distributes no data, public or not, without authorization by agency data custodians and the InforME Board, and then only in accordance with the requirements of the law.

The difficulty is in permitting bulk record access for worthwhile uses (selective service registration compliance, vehicle safety recalls, voter roll verification, jury duty rolls, and even mortgage marketing) while preventing abuses of bulk data availability.

APPROVED CHAPTER

JUN 10 '11 299

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 963 - L.D. 1317

An Act Concerning Sex Offender Registry Information

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 34-A MRSA §11221, sub-§9-A is enacted to read:

9-A. Registry information. Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except the following are public records:

A. Information provided to the public pursuant to subsection 9; and

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A.

Sec. 2. 34-A MRSA §11221, sub-§10, as amended by PL 2003, c. 711, Pt. C, §20 and affected by Pt. D, §2, is further amended to read:

10. Registrant access to information. ~~Pursuant to Title 16, section 620, the~~ The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section 620.

Sec. 3. 34-A MRSA §11221, sub-§13 is enacted to read:

13. Access to registrant information existing in electronic form restricted. Notwithstanding Title 1, chapter 13:

A. Except as made available to the public through the bureau's Internet website pursuant to subsection 9, the bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau; and

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency.

APPROVED CHAPTER

JUN 16 '11 378

STATE OF MAINE BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 1100 - L.D. 1499

An Act Concerning Fees for Users of County Registries of Deeds

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for

each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPROVED CHAPTER

JUN 20 '11 390

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 865 - L.D. 1167

An Act To Protect the Privacy of Persons Involved in Reportable Motor Vehicle Accidents

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 29-A MRSA §2251, sub-§7, as amended by PL 2003, c. 709, §4, is further amended to read:

7. Report information. An accident report made by an investigating officer or a ~~48-hour~~ report made by an operator as required by ~~former~~ subsection ~~5~~ 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a ~~48-hour~~ report as required by ~~former~~ subsection ~~5~~ 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

~~The~~ Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408, subsection 3.

Sec. 2. 29-A MRSA §2251, sub-§7-A is enacted to read:

7-A. Accident report database; public dissemination of accident report data. Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police must be treated as follows.

A. For purposes of this subsection, the following terms have the following meanings.

(1) "Data" means information existing in an electronic medium and contained in an accident report database.

(2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

(3) "Personally identifying accident report data" means:

(a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;

(b) A vehicle registration number;

(c) An insurance policy number;

(d) Information contained in any free text data field of an accident report; and

(e) Any other information contained in a data field of an accident report that may be used to identify a person.

B. The Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, records administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13.

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408.

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
Connecticut	**Sec. 1-211. (Formerly Sec. 1-19a). Disclosure of computer-stored public records. Contracts. Acquisition of system, equipment, software to store or retrieve nonexempt public records.** (a) Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, if the agency can reasonably make such copy or have such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212. (b) Except as otherwise provided by state statute, no public agency shall enter into a contract with, or otherwise obligate itself to, any person if such contract or obligation impairs the right of the public under the Freedom of Information Act to inspect or copy the agency's nonexempt public records existing on-line in, or stored on a device or medium used in connection with, a computer system owned, leased or otherwise used by the agency in the course of its governmental functions. (c) On and after July 1, 1992, before any public agency acquires any computer system, equipment or software to store or retrieve nonexempt public records, it shall consider whether such proposed system, equipment or software adequately provides for the rights of the public under the Freedom of Information Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records under the Freedom of Information Act. In meeting its obligations under this subsection, each state public agency shall consult with the Department of Information Technology as part of the agency's design analysis prior to acquiring any such computer system, equipment or software. The Department of Information Technology shall adopt written guidelines to assist municipal agencies in carrying out the purposes of this subsection. Nothing in this subsection shall require an agency to consult with said department prior to acquiring a system, equipment or software or modifying software, if such acquisition or modification is consistent with a design analysis for which such agency has previously consulted with said department. The Department of Information Technology shall consult with the Freedom of Information Commission on matters relating to access to and disclosure of public records for the purposes of this subsection. The provisions of this subsection shall not apply to software modifications which would not affect the rights of the public under the Freedom of Information Act.
Iowa	**22.3A Access to data processing software.** 1. As used in this section:

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	a. "Access" means the instruction of, communication with, storage of data in, or retrieval of data from a computer. *b. "Computer"* means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, *"computer"* includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks. *c. "Computer network"* means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities. *d. "Data"* means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer. *e. "Data processing software"* means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph *"data processing software"* includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program. 2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body's ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows: *a*. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5. *b*. If access to the data processing software is provided to a person for a purpose other than provided in paragraph *"a"*, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body. 3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body, including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
Mississippi	**§ 25-61-10. Use of sensitive software** (1) Any public body that uses sensitive software, as defined in Section 25- 61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either: (a) If [if] legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or (b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange. (2) A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7. (3) Before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system, equipment or software. (4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an information technology system used by the public body.
Missouri	**§ 610.029. Governmental agencies to provide information by electronic services, contracts for public records databases, requirements, electronic services defined--division of data processing may be consulted.** 1. A public governmental body keeping its records in an electronic format is strongly encouraged to provide access to its public records to members of the public in an electronic format. A public governmental body is strongly encouraged to make information available in usable electronic formats to the greatest extent feasible. A public governmental body may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an electronic record-keeping system used by the agency. Such contract may not allow any impediment that as

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the public governmental body's records. For purposes of this section, a usable electronic format shall allow, at a minimum, viewing and printing of records. However, if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested. The activities authorized pursuant to this section may not take priority over the primary responsibilities of a public governmental body. For purposes of this section the term "electronic services" means online access or access via other electronic means to an electronic file or database. This subsection shall not apply to contracts initially entered into before August 28, 2004. 2. Public governmental bodies shall include in a contract for electronic services provisions that: (1) Protect the security and integrity of the information system of the public governmental body and of information systems that are shared by public governmental bodies; and (2) Limit the liability of the public governmental body providing the services. 3. Each public governmental body may consult with the division of data processing and telecommunications of the office of administration to develop the electronic services offered by the public governmental body to the public pursuant to this section.
North Carolina	**§ 132-6.1. Electronic data-processing records.** (a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software. (b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule: State agencies by July 1, 1996; Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997; Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998; Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998. The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies. (c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes. (d) The following definitions apply in this section: (1) Computer database. – A structured collection of data or documents residing in a database management program or spreadsheet software. (2) Computer hardware. – Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data. (3) Computer program. – A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software. (4) Computer software. – Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software. (5) Electronic data-processing system. – Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
North Dakota	**44-04-18. Access to public records - Electronically stored information.** 1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities. 2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. 3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce. 4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal. 5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 or a political subdivision as defined in subsection 10 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available. 6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules. 7. A denial of a request for records made under this section must describe the legal authority for the denial and must be

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	in writing if requested. 8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3. 9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. 10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed. 11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.